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FISCAL IMPACT STATEMENT

LS 6390

BILL NUMBER: SB 89

NOTE PREPARED: Feb 22, 2008

BILL AMENDED: Feb 21, 2008

SUBJECT: Regulation of Loan Brokers.

FIRST AUTHOR: Sen. Lawson C

FIRST SPONSOR: Rep. Grubb

BILL STATUS: CR Adopted - 2nd House

FUNDS AFFECTED: X GENERAL
X DEDICATED
FEDERAL

IMPACT: State & Local

Summary of Legislation: (Amended) This bill has the following provisions:

Attorney General: The bill requires the Homeowner Protection Unit (Unit) within the Attorney General's Office to establish a toll-free telephone number to receive calls from persons having information about suspected fraudulent transactions and practices concerning residential real estate transactions. It also requires the Unit to share information reported by callers to the telephone number with appropriate law enforcement and regulatory agencies.

Indiana Housing and Community Development Authority: It allows the Indiana Housing and Community Development Authority (Authority) to make or participate in the making of: (1) construction loans; and (2) mortgage loans; for multiple family residential housing under terms approved by the authority.

It requires the Authority to ensure that a mortgage loan: (1) acquired by the Authority; or (2) made by a mortgage lender with funds provided by the Authority; may not know knowingly be made to a person whose adjusted family income exceeds 125% of the median income for the geographic area involved.

For purposes of allocating federal low-income housing credits, the bill provides that a "qualified building" is a building that is used or will be used to provide residential housing for special needs populations. (Current law provides that a "qualified building" is a building that is used or will be used to provide residential housing for persons with disabilities.)

It provides that the Authority's authority to issue bonds is subject to the approval of the Public Finance Director. (Current law provides that the Authority's bonding authority is subject to the approval of the

Governor.)

It repeals provisions concerning job and contract awarding preferences for the Authority's program for making or participating in the making of mortgage loans for multiple family residential housing. It also repeals provisions concerning the articles of incorporation of sponsors, builders, or developers of multiple family residential housing.

The bill requires the Authority to provide, not later than November 1, 2008, a report to the Legislative Council that includes the following: (1) An identification of new and existing funding sources that can be used to assist Indiana homeowners in refinancing their existing mortgage transactions, in order to prevent the foreclosure of the homes secured by the mortgages. (2) A plan for the rehabilitation of areas in Indiana that have been adversely or disproportionately affected by mortgage foreclosures.

Education: Beginning with the school year that begins in 2010, the bill requires school corporations and accredited nonpublic schools to include in their curricula for grades 9 through 12 instruction designed to: (1) increase students' awareness of consumer transactions, including mortgage transactions; and (2) foster personal financial responsibility. It provides that a school corporation or an accredited nonpublic school may provide the instruction by integrating it into its mathematics curriculum. It requires the Department of Education and the Department of Financial Institutions to develop guidelines to assist teachers assigned to provide the instruction.

Loan Brokers: The bill increases the amount of the bond that a licensed loan broker must maintain with the commissioner from \$50,000 to \$100,000. It eliminates the exemption from the loan broker statute for: (1) persons authorized to make loans on behalf of, or insured by, certain federal agencies; and (2) licensed real estate brokers and salespersons who render loan-related services in a real estate transaction.

FBI Background Checks: The bill specifies that evidence of compliance with the licensing and registration requirements for loan brokers, originators, and principal managers may include a national criminal history background check by the Federal Bureau of Investigation (FBI). The bill specifies that the Securities Commissioner shall require each: (1) equitable owner of a loan brokerage business; and (2) applicant for registration as an originator or a principal manager; to submit fingerprints for a national criminal history background check by the FBI. The bill prohibits the Commissioner from releasing the results of a national criminal history background check to a private entity.

Multistate Automated Licensing System: The bill allows the Commissioner to designate a multistate automated licensing system and repository (system) as the sole entity responsible for processing applications for: (1) licenses for loan brokers; and (2) certificates of registration for originators and principal managers. The bill allows the Commissioner to check the qualifications and background of each: (1) equitable owner of a loan brokerage business; and (2) applicant for registration as an originator or a principal manager; by accessing the system.

Breach of Security of Records: The bill specifies that a loan broker is subject to the state statute requiring disclosure of a breach of the security of any records: (1) maintained by the broker; and (2) containing the personal information of a borrower or prospective borrower.

Disposal of Personal Information: The bill prohibits loan brokers, originators, and principal managers from disposing of unencrypted, unredacted personal information with respect to borrowers or prospective borrowers without first taking certain actions to render the personal information illegible or unusable.

Prohibited Acts: It prohibits a person from performing specified acts in connection with a contract for the services of a loan broker.

First Lien Mortgage Lending Act: It provides that: (1) first lien mortgage transactions are subject to regulation by; and (2) creditors making first lien mortgage transactions must be licensed by; the Department of Financial Institutions.

It requires a creditor, a mortgage servicer, or an agent of a creditor to acknowledge a written offer made in connection with a proposed short sale of property that is subject to a mortgage transaction that is at least 10 days delinquent. It also provides that the acknowledgment must be provided not later than 10 business days after the date of the offer. The bill requires the creditor, servicer, or agent to accept or reject the short sale offer not later than 20 business days after receipt of the offer.

Department of Insurance: The bill requires the Department of Insurance to establish an electronic system for the collection and storage of the: (1) names; and (2) license, registration, or certificate numbers; of certain professionals that participate in or assist with residential mortgage transactions. It provides that the system must allow closing agents to: (1) input the required information with respect to each professional involved in the transaction; and (2) submit the form electronically to a data base maintained by the Department of Insurance.

The bill also requires the Department of Insurance to make the data base accessible to: (1) the state agencies responsible for regulating the specified professionals; and (2) the Homeowner Protection Unit in the Attorney General's Office.

Home Loan Practices Act: It specifies that a violation of the Home Loan Practices Act (Act) is a deceptive act subject to action by the Attorney General. For a deceptive act involving home loan practices, the bill increases: (1) the damages that may be awarded to an aggrieved consumer; and (2) the amount of the civil penalties that may be imposed on a violator. It provides that any civil penalties collected by the Attorney General shall be deposited in the Home Owner Protection Unit account of the state General Fund.

The bill increases the statutory damages that may be recovered by a person aggrieved by a violation of the Act from: (1) two times; to (2) four times; the amount of the finance charges under the contract. It enhances the crime involving a knowing or intentional violation of the Act from a Class A misdemeanor to a Class D felony. It also increases the civil penalty for the violation of: (1) the Act; or (2) an injunction issued to enjoin a violation of the Act; from \$10,000 to \$20,000.

Reasonable Inquiry: The bill prohibits a creditor from recommending or issuing to a prospective borrower: (1) a stated income or no documentation loan; or (2) a home loan if the creditor does not first conduct a reasonable inquiry concerning the prospective borrower's ability to repay the loan. It provides that if a creditor conducts a reasonable inquiry, the creditor is not liable if the borrower later defaults on a home loan issued by the creditor.

Settlement Service Providers: It requires a settlement service provider to make closing documents available to a borrower at least 48 hours before the closing, subject to the settlement service provider's ability to obtain the closing documents from the creditor making the home loan, after the settlement service provider's good faith effort to obtain the closing documents from the creditor. It provides that if: (1) the borrower does not receive the closing documents within the time required; or (2) the terms of the home loan set forth in the documents provided differ from the terms presented to the borrower at the time of closing; the borrower is

entitled to delay or reschedule the closing without penalty and without forfeiting the right to enter into the loan or the purchase contract.

Real Estate Appraisers: The bill requires the Real Estate Appraiser Licensure and Certification Board to require each initial applicant for licensure or certification as a real estate appraiser to submit fingerprints for a national criminal history background check by the FBI, and it prohibits the Board from releasing the results of a national criminal history background check to a private entity.

Task Force: The bill requires various state agencies to form the Mortgage Lending and Fraud Prevention Task Force to coordinate the state's efforts to:

- (1) regulate the various participants involved in originating, issuing, and closing home loans;
- (2) enforce state laws and rules concerning mortgage lending practices and mortgage fraud;
- and
- (3) prevent fraudulent practices in the home loan industry and investigate and prosecute cases involving mortgage fraud.

Appropriate Agency: The bill requires the Securities Commissioner and the Director of the Department of Financial Institutions to cooperate to determine the appropriate state agency or department to regulate a person subject to regulation, licensure, or registration under both the loan broker statute and the UCCC.

Technical Changes: It makes technical changes.

(The introduced version of this bill was prepared by the Interim Study Committee on Mortgage Practices and Home Loan Foreclosures.)

Effective Date: (Amended) Upon passage; July 1, 2008; January 1, 2009.

Summary of NET State Impact: (Revised) The bill will increase costs for the Attorney General to investigate and bring actions; the Secretary of State (SOS) and Department of Financial Institutions (DFI) to regulate home loan practices; the Indiana State Police (ISP) to provide national background checks; the Department of Insurance to establish and maintain a system to collect and store loan participant information; and for various other state agencies and task forces to meet the other provisions of the bill. These costs will be offset, however, by fees or cost recoveries allowed under the bill and by increases or new civil penalties that are either deposited directly in the accounts funding these agencies or the state General Fund.

Explanation of State Expenditures: (Revised) *Attorney General:* Maintaining a toll-free number to report fraud and designating staff to ensure that information received from callers is passed to the proper entities is expected to have increased costs, but be within the existing levels of resources of the Office of Attorney General. Also, the Attorney General's Office may incur additional expenses to investigate deceptive acts and maintain actions under various provisions of the bill. The Attorney General, however, through court action may receive reimbursement for costs in successful actions. [Expenditures for the Homeowner Protection Unit are funded through the Homeowner Protection account of the state General Fund.]

(Revised) *Indiana Housing and Community Development Authority:* To the extent that the bill would allow the Authority greater flexibility to acquire mortgages or make loans to mortgage lenders, the Authority could effect the locations where loans are made or acquired. However, the number of loans made or acquired by the Authority is limited by its available funding.

The bill also could minimally increase administrative costs for the Authority to prepare a report for the Legislative Council. These costs are expected to be within the existing level of resources of the Authority.

(Revised) *Education*: Minimal one-time cost increases for the Department of Education and the DFI to develop guidelines for instruction concerning consumer transactions and personal financial responsibility are expected to be within these agencies' existing resources. The State Board of Education must adopt rules to assist teachers in providing the instruction required which could involve minimal additional costs.

(Revised) *Loan Brokers, Real Estate Appraisers, and First Lien Mortgage Transaction Licenses*: The ISP could incur additional administrative costs to take fingerprints and make national criminal background searches. These costs are offset, however, by the applicant paying the costs or fee associated with fingerprinting and background checks.

(Revised) *Multistate Automated Licensing Systems*: The fiscal impact of the Securities Commissioner or the Director of the DFI designating a multistate automated licensing system and repository established and operated by a third party is indeterminate and will depend on the system used and the number of persons entered. By accessing systems maintained by a third party, the amount of administrative time needed to investigate registrants or licensees could be reduced and result in cost savings for the Securities Commissioner or DFI staff. Also, the costs of entering registrants into the system may be offset by fees imposed by the Securities Commissioner or the Director. The Securities Commissioner or Director would not be able to require an exempt person to submit information or participate in the system.

(Revised) *Department of Insurance*: By September 1, 2009, the DOI is to establish and maintain an electronic system for the collection and storage of information concerning participants in a single-family residential first lien or refinancing transaction. The system is expected to increase costs for the Department of Insurance.

(Revised) *Mortgage Lending and Fraud Prevention Task Force*: The Task Force is expected to incur minimal annual expenses to report to the Legislative Council by November 1 each year concerning its activities during the past year.

(Revised) *Loan Brokers*: There are no data available to indicate if more people will be found guilty of Class D or Class C felonies for violations of the state law concerning loan brokers because of the addition of several provisions to the loan broker statute and the removal of an exemption for real estate broker or salesperson to the extent that the person is rendering loan-related services. A person who knowingly violates state law concerning loan brokers commits a Class D felony. However, the offense is a Class C felony if the person knowingly makes or causes to be made any statement that is false or misleading in any material respect. Depending upon mitigating and aggravating circumstances, a Class D felony is punishable by a prison term ranging from six months to three years or reduction to Class A misdemeanor, and a Class C felony is punishable by a prison term ranging from 2 to 8 years.

[The average expenditure to house an adult offender was \$19,185 in FY 2007. (This does not include the cost of new construction.) If offenders can be housed in existing facilities with no additional staff, the marginal cost for medical care, food, and clothing is approximately \$1,825 annually, or \$5 daily, per prisoner. The estimated average cost of housing a juvenile in a state juvenile facility was \$63,138. The average length of stay in Department of Correction (DOC) facilities for all Class D felony offenders is approximately ten months and for all Class C felony offenders is two years.]

(Revised) *Home Loan Practices*: A violation of state law concerning home loan practices increases from a Class A misdemeanor to Class D felony under the bill. State expenditures could increase if an offender is incarcerated in a state prison rather than in a local jail.

(Revised) *Background and Additional Details*:

At the end of FY 2007, the SOS reverted \$42,178 to the state General Fund. The SOS was appropriated \$3.5 M in FY 2008 from state General and dedicated funds. SOS administration accounts for \$2.5 M of the appropriation. The Securities Division Enforcement Fund was appropriated \$0.9 M for FY 2008.

For FY 2008, the ISP state General Fund appropriation is \$56.4 M. The ISP reverted \$184,991 to the state General Fund. About \$18,000 of the reversion was from the State Police Matching Fund.

There are currently 1,271 Indiana-licensed mortgage brokers. There are 1,091 brokers operating in Indiana without a license due to a statutory exemption.

Explanation of State Revenues: (Revised) *Home Loan Practices Act*: The bill makes a violation of the home loan practices statute a deceptive act and allows for a civil penalty of up to \$10,000 per deceptive act and establishes a civil penalty of up to \$30,000 for the violation of an injunction issued by the court against a deceptive act concerning home loans. Civil penalties collected for a violation are placed in the Homeowner Protection Account of the state General Fund and the civil penalty for violation of an injunction are deposited in the state General Fund. The civil penalty for an incurable deceptive act concerning home loans is up to \$1,000 per violation.

(Revised) *Settlement Service Providers*: The bill establishes a \$25 civil penalty for each instance in which a settlement service provider fails to make documents available to a borrower not later than 48 hours before the closing of a home loan. This civil penalty would be deposited in the state General Fund.

(Revised) *Department of Insurance*: After December 31, 2009, within the period specified by the Department, a closing agent shall input into the DOI system, the name and identifying number (where applicable) of the loan brokerage, loan originator, principal broker, and sales person. For each instance that a closing agent fails to comply with these or other existing law requirements, a civil penalty of \$25 applies. These civil penalties are deposited in the Property Tax Replacement Fund.

(Revised) *Breach of Security of Records*: Failing to disclose or notify concerning a breach of security is a deceptive act actionable only by the Attorney General. The Attorney General may bring an action for an injunction to enjoin future violations; for a civil penalty of not more than \$150,000 per deceptive act; and for reasonable costs including investigation and maintaining an action.

(Revised) *Loan Brokers*: If additional court cases occur and fines are collected, revenue to both the Common School Fund and the state General Fund would increase. The maximum fine for a Class D felony is \$10,000. Criminal fines are deposited in the Common School Fund.

If the case is filed in a circuit, superior, or county court, 70% of the \$120 criminal costs fee that is assessed and collected when a guilty verdict is entered would be deposited in the state General Fund. If the case is filed in a city or town court, 55% of the fee would be deposited in the state General Fund. In addition, some or all of the document storage fee (\$2), automated record keeping fee (\$7), judicial salaries fee (\$17), public

defense administration fee (\$3), court administration fee (\$3), judicial insurance adjustment fee (\$1), and the DNA sample processing fee (\$1) are deposited into the state General Fund.

Also, whenever it appears to the Commissioner that a person has engaged in or is about to engage in an act or a practice constituting a violation of the loan broker laws, the Commissioner may investigate and may issue orders and notices as the Commissioner determines to be in the public interest. After notice and hearing, the Commissioner may enter an order of rescission, restitution, or disgorgement, including interest at the rate of 8% per year, directed to a person who has violated these laws. After a hearing, the Commissioner may impose a civil penalty of up to \$10,000 for each violation in addition to these other remedies. [Civil penalties are deposited in the state General Fund.] A violator may also be liable to any person damaged by the violation, for the amount of the actual damages suffered, interest at the legal rate, and attorney's fees. The court fees for a civil action by a private party are \$100.

(Revised) *First Lien Mortgage Lending Act*: The bill allows the DFI to establish the initial and renewal fee for licenses to engage in first lien mortgage transactions.

The DFI may bring civil actions to restrain a person from violating the act, and if the court finds a willful violation has occurred, the court may assess a civil penalty of not more than \$5,000. In addition to all other remedies, the DFI may impose a civil penalty of not more than \$10,000 per violation.

(Revised) *Home Loan Practices*: More revenue to the Common School Fund could be collected if a larger criminal fine is assessed by the sentencing court. The maximum fine for a Class A misdemeanor is \$5,000, while the maximum fine for a Class D felony is \$10,000. Court fees for both misdemeanors and felonies are \$120.

In addition, the Attorney General may bring a civil action to enjoin violation of the home loans practices law and the court may impose a civil penalty of up to \$20,000.

(Revised) *Background and Additional Details*: The Homeowner Protection account receives \$1.25 from mortgage recordings, and in FY 2007 received \$443,842 in fee revenue.

Explanation of Local Expenditures: (Revised) *Education*: The cost of incorporating instruction about consumer practices and personal finance will depend on the implementation by the school corporation. School corporations could incur one-time costs to develop the curriculum, but the costs will vary and may be minimal if a curriculum is being revised anyway.

(Revised) *Loan Brokers*: If more defendants are detained in county jails prior to their court hearings, local expenditures for jail operations may increase. The average cost per day is approximately \$44.

(Revised) *Home Loan Practices*: If an offender is sentenced to state prison rather than to a county jail, the costs to the county may be reduced. The maximum term of imprisonment for a Class A misdemeanor is up to one year. The average daily cost to incarcerate a prisoner in a county jail is roughly \$44.

Explanation of Local Revenues: *Loan Brokers*: If additional court actions occur and a guilty verdict is entered, local governments would receive revenue from the following sources: The county general fund would receive 27% of the \$120 criminal costs fee that is assessed in a court of record. Cities and towns maintaining a law enforcement agency that prosecutes at least 50% of its ordinance violations in a court of

record may receive 3% of the criminal costs fee. In addition, several additional fees may be collected at the discretion of the judge and depending upon the particular type of criminal case.

State Agencies Affected: Office of the Attorney General; DOE; DFI; SOS, ISP, DOC.

Local Agencies Affected: Trial courts, local law enforcement agencies.

Information Sources: Indiana Sheriffs' Association; DOC; *State of Indiana List of Appropriations, July 1, 2007, to June 30, 2009*, State Budget Agency; Matt Teusing, Jeff Bush, Office of the Secretary of State; *Report Pursuant to HEA 1717 on the Feasibility of the Regulation of Mortgage Brokers by the Indiana Department of Financial Institutions, November 1, 2007*.

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